

**KERMAN GATEWAY MONUMENT MAINTENANCE AGREEMENT
WITH CITY OF KERMAN**

THIS AGREEMENT is made effective this _____ day of _____, 20___, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the City of Kerman; hereinafter referred to as "CITY"; and collectively referred to as "PARTIES."

SECTION I

RECITALS

1. State is proposing to place a Gateway Monument, herein referred to as "MONUMENT," within the STATE right of way on State Route 145, at Jensen Avenue (Postmile 33.13) as shown in Exhibit "A," attached to and made a part of this agreement.
2. CITY has agreed to assume maintenance responsibility of the MONUMENT upon project completion.
3. The PARTIES hereto mutually desire to identify the maintenance responsibilities of CITY for the improvements of MONUMENT constructed within the STATE right of way.
- 4.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:
 - 1.1. Exhibit A consists of plan drawings that describe the areas within STATE right of way which are the responsibility of the CITY to maintain in accordance with this Agreement.
 - 1.2. If there is mutual agreement on a change in the maintenance responsibilities between PARTIES, the PARTIES can revise the Exhibit A by a mutual written execution of the exhibit.
2. CITY agrees, at CITY expense, to do the following:
 - 2.1. The degree or extent of maintenance work to be performed, and the standards therefor, shall be in accordance with the provisions of Section 27 of the Streets

and Highways Code and the then current edition of the State Maintenance Manual.

- 2.2. CITY shall ensure that MONUMENT is provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- 2.3. CITY and CITY contractors must obtain the necessary Encroachment Permits from STATE's District 06 Encroachment Permit Office prior to entering STATE right of way to perform CITY maintenance responsibilities.
- 2.4. To remove MONUMENT and restore STATE owned areas to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- 2.5. To inspect MONUMENT on a regular monthly basis to ensure the safe operation and condition of the MONUMENT.
- 2.6. To expeditiously MAINTAIN, replace, repair or remove from service any MONUMENT component that has become unsafe or unsightly.
- 2.7. To MAINTAIN MONUMENT within the Agreement limits of the STATE highway right of way, as shown on Exhibit A. MAINTENANCE includes, but is not limited to, restoration work to maintain the integrity of the MONUMENT, and the removal of dirt, debris, and graffiti on the MONUMENT in an expeditious manner.
- 2.8. CITY, at CITY sole cost and expense, shall remove all graffiti from the MONUMENT. CITY is solely responsible for ensuring that any graffiti that in any way resembles a mural, artwork, paintings, or other similar elements shall not be removed without the written authorization of STATE. Graffiti removal must protect air and water quality as required by law. CITY shall conform to the terms stated in STATE's Maintenance Manual, Volume 1, Family D Chapter, D1.06. LOCAL AGENCY shall discuss such possible graffiti removal with STATE's District 06 Transportation Art Coordinator before conducting any graffiti removal or remediation.
- 2.9. Maintenance practices shall protect air and water quality as required by law.
- 2.10. To remove MONUMENT, whenever, in the opinion of STATE, that it creates a safety or operational concern due to deterioration or inadequate maintenance. In the event CITY fails to maintain, repair, rehabilitate, or remove MONUMENT in a timely manner, STATE may remove MONUMENT sixty (60) days following written notification to CITY, and STATE will bill CITY for all costs associated with the removal and restoration of STATE-owned area to its original condition.
- 2.11. All work by or on behalf of CITY will be done at no cost to STATE.

3. STATE agrees to do the following:

- 3.1. May provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.
- 3.2. Issue encroachment permits to CITY at no cost to it.
- 3.3. STATE reserves the right to remove MONUMENT due to construction, rehabilitation, or other necessary activities affecting the transportation facilities without any obligation, compensation to, or approval of CITY. STATE will strive to notify CITY of its intent to remove MONUMENT to allow for timely removal and salvage by CITY.
- 3.4. STATE reserves the right to remove MONUMENT or alter parts that presents an immediate safety hazard to the public without delay or advanced notification to CITY.

4. LEGAL RELATIONS AND RESPONSIBILITIES

- 4.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.
- 4.2. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
- 4.3. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation

or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

5. PREVAILING WAGES:

5.1. Labor Code Compliance- If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. CITY must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. CITY agrees to include prevailing wage requirements in its contracts for public works. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

5.2. Requirements in Subcontracts - CITY shall require its contractors to include prevailing wage requirements in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts.

6. INSURANCE -

6.1. SELF-INSURED - CITY is self-insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that CITY meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the Gateway Monument location as depicted in EXHIBIT A. CITY shall deliver to STATE the Letter of Self-Insurance with a signed copy of this AGREEMENT. A copy of the executed Letter of Self-Insurance shall be attached hereto and incorporate as Exhibit B.

6.2. SELF-INSURED using Contractor - If the work performed under this AGREEMENT is done by CITY's contractor(s), CITY shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form

satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

7. TERMINATION - This Agreement may be terminated by mutual written consent by PARTIES or by STATE for cause. CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.
8. TERM OF AGREEMENT - This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated as set forth in Article 7 above.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

THE CITY OF KERMAN

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Gary Yep, Mayor

Initiated and Approved

By: _____
John Jansons, City Manager

By: _____
John Liu, Deputy District Director
Maintenance and Operations

ATTEST:

By: _____
Marci Reyes, City Clerk

By: _____
Hilda Montoy, City Attorney

EXHIBIT A

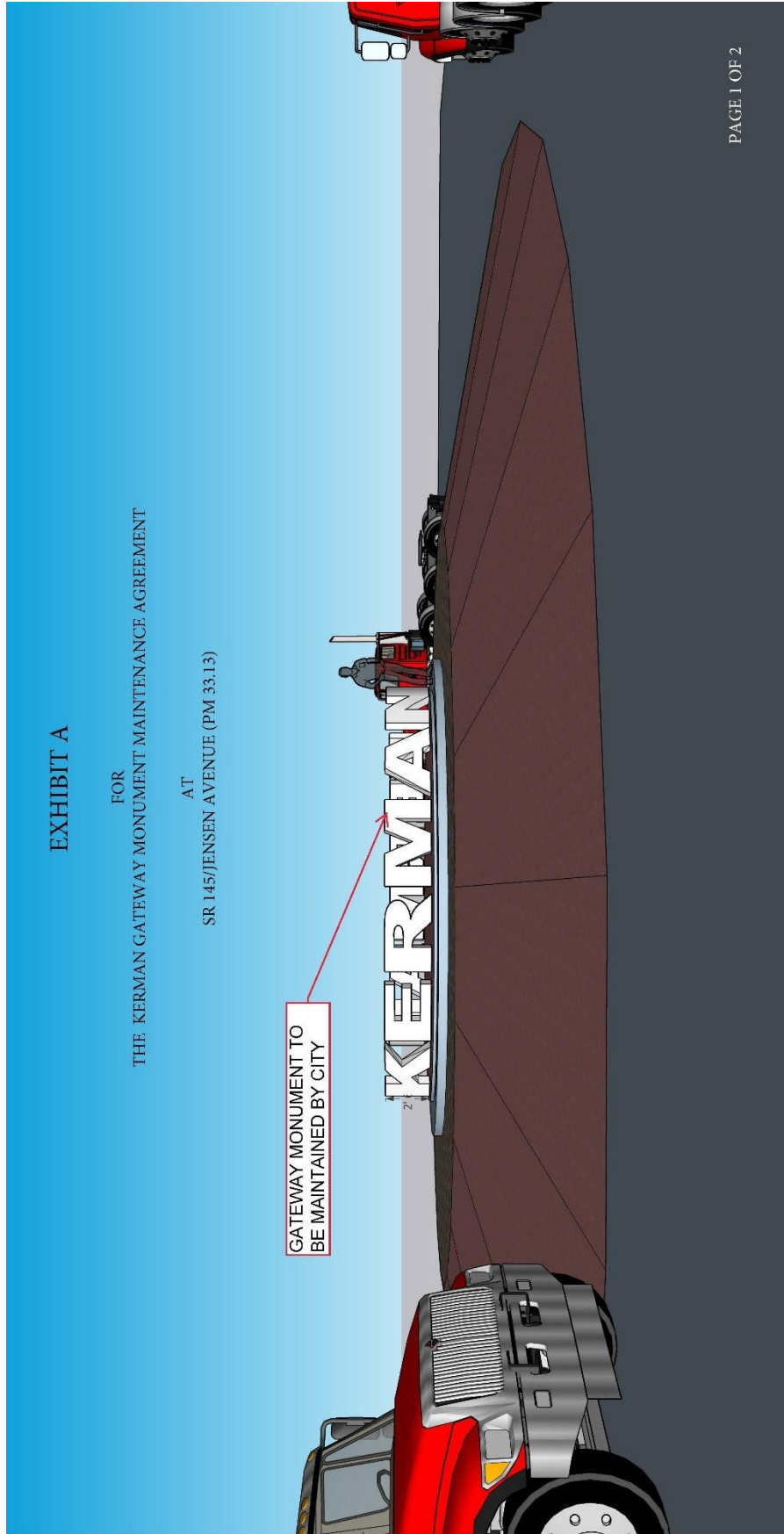


EXHIBIT A

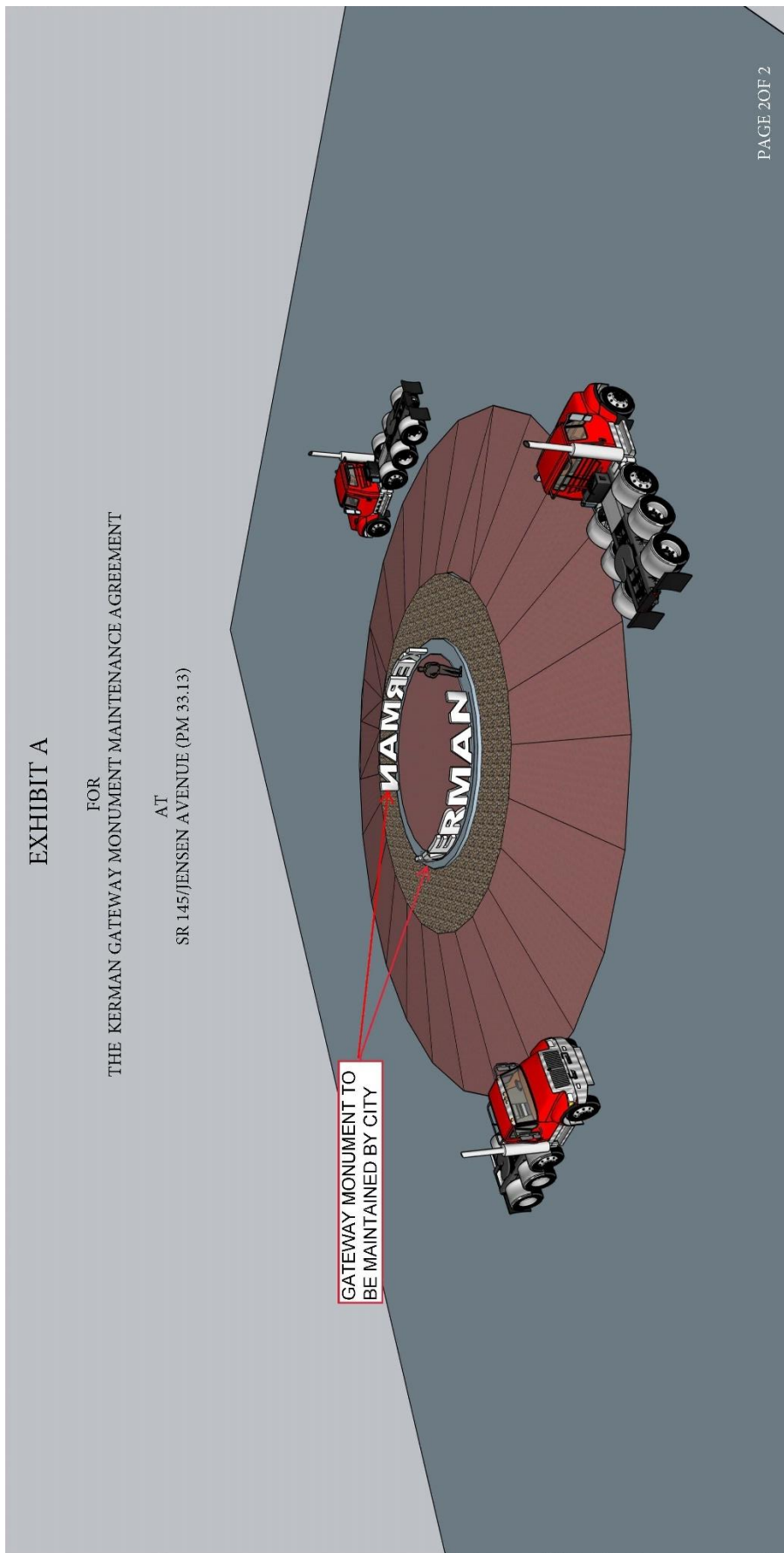


EXHIBIT B – LETTER OF CERTIFICATE OF CITY OF KERMAN STATEMENT OF SELF INSURANCE

Department of Transportation, District 6
1352 W. Olive Avenue
Fresno, CA 93728
ATTN: Daniel Lum

_____20__

Department of Finance

RE: Statement of Self Insurance for City of Kerman Related to the Gateway Monument Maintenance Agreement with State of California Department of Transportation ("STATE") along Highway 145at Jensen Avenue (PM 33.13)

Dear Lum:

The purpose of this letter is to certify that the CITY is self-insured and self-funded covering third-party claims arising out of its general operations (for example, commercial general liability and automobile liability insurance). Further the CITY is self-insured covering workers' compensation claims and has received the consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the CITY appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the CITY.

The CITY certifies its self-insured, general liability coverage for bodily injury liability and property damage liability, meets the required coverage amounts in section 6 (INSURANCE) of the Maintenance Agreement, specifically general liability insurance, coverage of bodily injury liability and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. The CITY further represents that regarding any claims made in connection with the Maintenance Agreement by the STATE, the STATE will be first-in-line regarding the reserved, self-insured amounts.

If you need any additional information regarding this letter, please direct those inquires through my office.

Sincerely,

Josefina Alvarez
Interim Finance Director